

Central Administrative Tribunal
Principal Bench, New Delhi.

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New Delhi, the 17th day of July 1995. OA 1019/91

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr R.K.Ahooja, Member (A)

Mahfooj Ali Khan
Head Trains Clerk
Under Chief Yard Master
Northern Railway
Juhu, Kanpur
and 4 others

...Applicants.

(By Advocate: Shri B.S.Mainee)

Versus

Union of India through

1. Northern Railway
Baroda House
New Delhi.

2. The Divisional Railway Manager
Northern Railway
Allahabad.

...Respondents.

(By Advocate: Shri Rajesh)

O R D E R (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

The applicants who are working as Head Trains Clerks under Chief Yard Master, Northern Railway, Kanpur are aggrieved by the action of the respondents in not considering them for selection to the post of Trains Clerks/Guards, though they had been going on making representations, making it clear that for the purpose of consideration for selection as Trains Guards, they may be reverted to the post of Senior Trains Clerks. The brief facts necessary for the disposal of the application can be stated as follows:

22. The applicants were appointed as Trains Clerks in the pay scale of Rs.260-400 which was revised to Rs.950-1500. They were subsequently promoted as Senior Trains Clerks which was in the pre-revised scale of Rs.330-560 during the year 1980-83, and this scale was subsequently revised to Rs.1200-2040. While the Trains Clerks have a normal line of promotion to the next higher post of Head Clerks, they are also entitled for being considered for selection as Trains Guards towards 31% of the total vacancies. While the applicants were working as Senior Trains Clerks, on account of the upgradation with effect from

1.1.1984, they were promoted as Head Clerks in the scale of Rs.425-640 which was later revised to Rs.1400-2300. They were not confirmed on the post of Head Clerks. The applicants 2 to 5 were promoted with effect from 1.1.1984 whereas the first applicant was promoted on 24.7.1986. While placing the applicants 2 to 5 on the upgraded post of Head Trains Clerks, and while promoting the first applicant to that post on 24.7.86, no option was obtained from them by the railway administration that they accepted the posts, forgoing their right to be considered towards 31% vacancies in the category of guards. While the respondents initiated action for filling up the posts of guards in the year 1986-87, limiting the chance to Trains Clerks who are in the grade of Rs.950-1500 or 1200-2040, the applicants who were promoted as Head Trains Clerks made representations to the Railway Administration to revert them to the post of Senior Trains Clerks and also to allow them to appear in the selection for the post of Trains Clerks. Though the applications submitted by the applicants were forwarded by the Chief Controller, Tundla to D.R.M., Allahabad, the applicants were not called for selection. Thereafter the applicants served a notice through lawyer on 1.3.87 claiming the benefit of selection to the post of Train Guards reverting to the post of Senior Train Clerks. There was no response to the lawyer notice also. The applicants went on making representations and the matter was further taken up by the Northern Railway Men Union, one of the two recognised unions of Northern Railway. However, this also did not evoke any favourable response from the respondents. Meanwhile while the applicants were pursuing the matter filing repeated representations, the respondents initiated action for selection to the post of Goods Guards by letter dated 30.11.90 calling upon the eligible staff to submit their applications. By a letter dated 15.4.91, the candidates were called for a written test on 5.5.91 in which though 209 candidates were invited, the applicants names were not there. Under these circumstances, alleging the action of the railway administration in not affording the applicants an opportunity to advance their career by allowing them to appear in the Guards selection which according

to the applicants is illegal, arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution, the applicants have filed this application for the following reliefs:

(i) to direct the respondents to give options to the applicants for seeking their advancement either to the category of Guard or to the category of Train Clerks.

(ii) to allow the applicants to seek further promotions to the category of Guards and for that purpose revert the applicants from the post of Head Trains Clerks to the post of Senior Trains Clerks.

(iii) any other or further relief the Tribunal may deem fit and proper under the circumstances of the case.

3. The applicants had also sought interim directions to the respondents to allow the applicants to appear in the selection for the post of Guards which had been initiated vide letter dated 30.11.90. After hearing the counsels on either side, the application was admitted but the interim relief was not granted.

4. The respondents in their reply have contended that two persons Pritam Singh Naveen and Roshan Singh appeared in Guard's written seniority cum suitability test pursuant to letter dated 16.5.83 but were declared failed and that Khurshid Alam and V.P.Saxena were called to appear in written seniority cum suitability test of Guard vid letter dated 7.1.84 but were not selected owing to their failure and there is no provision to obtain an option from a candidate who is being considered for promotion to a higher grade post in his own cadre. Though an option is required from a candidate who happens to be on a panel of a post other than his own cadre while he is to be considered for promotion in his own panel. They further contended that only applicant No.1 Mahfooj Ali Khan has submitted his request for reversion on 5.1.87 from the post of Head Trains Clerk to Senior Trains Clerk while others had not submitted any such representation, and as all the applicants have been regularly promoted as Head Trains Clerks as per

the existing rules, they are not entitled to be considered for promotion as Trains Guards and therefore the applicants are not entitled to the relief which they sought.

4. The applicants in their rejoinder have reiterated the allegations made in the application and they contended that all the applicants have requested for reversion from the post of Head Trains Clerks to which they were promoted without their option and that the allegations made in the reply statement are not correct.

5. We have gone through the pleadings in this case and also heard Shri B.S. Mainee, counsel for the applicant and Shri Rajesh, counsel for the respondents.

6. The question whether Head Train Clerks are entitled to an option for reversion and be considered for selection to the post of Train Guards came up for consideration before the Jodhpur Bench of CAT in OA 576/87. The applicants before the Jodhpur Bench were Head Trains Clerks and their grievance was that they were not given option to be considered for selection to the post of Train Guards and therefore they had a direction to the respondents to revert them as Senior Trains Clerks and to consider their suitability for appointment as Train Guards. The Jodhpur Bench therefore held that senior to those of the applicants who had opted for reversion as Trains Clerks were entitled to the reversion for consideration for selection as Trains Guards. The same contention has been raised in this case also. A reading of the pleadings, relevant instructions and the railway board's letter revealed that the senior trains clerks who were promoted as Head Trains Clerks have a right to opt to continue as Senior Train Clerks and for consideration for selection to the post of Train Guards.

7. We are in agreement with the view taken by the Jodhpur Bench in the case and we are of the view that the applicants are entitled to have an option to continue as Train Guards and selection to the post of Train Guards as admittedly no such opportunity for option was given to the applicants and as the

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applicants had been going on making repeated representations for their reversion and for consideration for selection to the post of Train Guards, the respondents are bound to consider their case for selection and appointment as Train Guards.

8. Learned counsel for the respondents argued that as the applicants have not pursued their case after they made their representations in the year 1986, they cannot now be heard to contend that they are entitled to be considered for the selection for the year 1991. We note that the respondents in their reply have not taken up a plea that the case of the applicant is barred by limitation. However the applicants are not seeking any relief against those who were selected and appointed as Train Guards, but their case is that now the respondents are selecting Train Guards for appointment as Train Guards, they have a cause of action to be considered for selection. We find that this argument advanced on the side of the applicants has considerable force. The applicants as stated so far had prayed for interim relief directing the respondents to allow them also to participate in the selection process but the above relief was not granted. However, since the applicants are legitimately entitled to be considered for selection to the post of Train Guards especially when they have been making repeated representations for reversion to the post of Senior Train Clerks, we are of the considered view that in the interest of justice the respondents have to be directed to revert the applicants to the post of Senior Train Clerks and consider them for selection to the post of Train Guards in accordance with the selection which was held in 1991, after holding a supplementary test for them.

test for them.

9. In the result, we dispose of this application with directions to the respondents to revert the applicants to the post of Senior Train Clerks and consider their selection to the post of Train Guards after holding a supplementary test for them, in addition to the two candidates who were considered in the year 1991 and if ~~any~~ one of them was selected and appointed, to adjust their seniority in accordance with the relevant rules and regulations that are applicable to the respective posts in full accordance with the ~~date~~ of consideration of this order.

rules. These directions shall be complied with by the respondents in full within 3 months from the date of communication of this order.

There is no order as to costs.

R.K. Ahooja

(R.K. Ahooja)
Member (A)

A.V. Haridasan

(A.V. Haridasan)
Vice Chairman (J)

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